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SUBJECT: Fourteenth Session of the WIPO Standing Committee on the Law of Patents

¶1. The World Intellectual Property Organization's Standing Committee on the Law of Patents (WIPO SCP) continued to discuss preliminary studies requested by the SCP in June 2008 and March 2009, and commenced a discussion on Brazil's proposal concerning exceptions and limitations to patent rights. However, an impasse resulted at the SCP on the future work of the committee. As a result, the agenda from this session will be used for the next meeting in October 2010. During two days worth of negotiations on the future work topic, it became clear that Member States fail to see eye to eye on the international patent system itself, as some view the system to be a threat to development and oppose any global efforts - whether normative or cooperative technical assistance work -- in improving the patent system. END SUMMARY.

¶2. The WIPO SCP met from January 25-29, 2010. Delegations from 103 countries, 10 international organizations and 28 non-governmental organizations participated in the Committee which was chaired by Mr. Maximiliano Santa Cruz from Chile. The United States delegation was represented by USPTO External Affairs Administrator Arti Rai, Charles Eloshway of USPTO, Janet Speck, Deputy Director, State Department and Deborah Lashley-Johnson, IP Attach???? at the U.S. Mission to the UN.

¶3. Discussions were based on preliminary studies written by the International Bureau at WIPO concerning the relationship of standards and patents, client-attorney privilege, dissemination of patent information, transfer of technology, and opposition systems. Many delegations stated that these documents constituted a good basis for discussions, and requested further clarifications on various issues contained in the documents. However, certain statements made by developing countries and NGO were worrisome, such as: equating work on the client-attorney disclosure problem to patent law harmonization work; viewing the topic of dissemination of patent information to include the disclosure of proprietary information and trade secrets; and stating that a study should include how the patent system hinders technology transfer.

¶4. The topic of limitations and exceptions was also discussed, although the external experts' study was not available for this meeting. A proposal in respect of exceptions and limitations to patent rights was submitted by the Delegation of Brazil, which received support by many developing countries. The proposal has three phases: discussion on national experiences on patent right exceptions and limitations; focus work on exceptions and limitations that help to address developmental concerns; and the development of an exceptions and limitations manual. Other delegations, such as the U.S., Switzerland and other industrialized countries expressed concern that they had not received the document in advance of the meeting, and therefore had insufficient time to consider the proposal, and expressed a wish to consider the proposal at the following session in October 2010 when the external expert study would also be presented. Nonetheless, the U.S. noted that it was interested in studying the issue more and saw strong intellectual property rights and enforcement to be consistent with proper, basic limitations and exceptions.

¶5. Gridlock, however, occurred once the committee moved onto the topic of future work. Several regional coordinators and interested Member States negotiated informally a compromise work program that ensured balanced and focused work for the SCP. The proposed work program included: 1. further study on technology transfer concerning the relationship of patent technology transfer and innovation; 2. work on limitations and exceptions that included the external expert study and Brazil's work program proposal; 3. patent administration issues that included work on patent quality management and further work on dissemination of patent information that looked at digitization issues and access to complete patent information; 4. further work on client-attorney privilege to solicit Member State input on national experiences; 5. future conference on public health and food security issues; and 6. reaffirming that the non-exhaustive list of issues for possible discussion by the SCP remain open for further elaboration at the next meeting, but agreeing that Member States would refrain from adding on to the list at this session, so as to ensure that work on the existing studies could be more focused. These items were truly a compromise text, particularly for Group B, as our primary objective to discuss patent harmonization issues was not part of this list and many of the items had more of a developing country interest/slant. On day one of our conversation concerning future work, we reached agreement among Group B countries, GRULAC, Eastern European countries, Singapore, Korea, the regional coordinator of Africa, Angola.

¶6. However, on day two, Angola, members of the Africa Group, such as Egypt and South Africa, Pakistan, India, Sri Lanka, Malaysia,

Yemen, Iran and Indonesia, opposed the compromise text. Their amendments suggested future studies on the negative impacts patents have on technology transfer and standards, and a new study on patents and public health. There was also a proposal on the establishment of a technology transfer commission to focus on the problems of technology transfer. Their proposal further lacked balance in their deletion of the only two issues offered by Group B in the initial compromise proposal concerning patent quality management and further work on client-attorney privilege. The counter-proposal also included another large conference on patents and public policy issues as a follow up to the one held in July ¶2009. Lastly, they pushed to expand the non-exhaustive list to include topics such as the impact of the patent system on developing countries and LDCs, and the relationship of patents and food security.

¶7. While Group B and the U.S. were disappointed that the agreement reached the day before did not satisfy all of the Africa Group and the Asia Group, we were willing to negotiate further from our compromise text. However, it became clear that the Africa Group and some Asian Group countries were not willing to move from their position. Group B in particular was willing to add on to the non exhaustive list with the inclusion of "work sharing" and the "strategic use of IP in business" as proposed by the Group of Eastern European Countries. Despite developing countries' insistence that the non exhaustive list remain open, Indonesia and India opposed the Group B suggestion of "work sharing", arguing that it was duplicative of work at the PCT working group and that it was patent harmonization-related and therefore not welcomed by developing countries. Further, even though Group B reminded these countries that their proposed suggestions on the list were duplicative of work occurring in the Committee on Development and IP (CDIP), Egypt's response was that development agenda work in CDIP was a cross-cutting issue throughout the Organization, and therefore duplication was needed.

¶8. COMMENT: Group B member states expressed deep concern about the events that transpired at this meeting. Several countries refused to negotiate from their maximalist positions, which has been a concern in other committees at WIPO. The inflexibility of developing country positions will make reaching a compromise on any SCP work program impossible, particularly when this committee has had a history of disbanding for three years due to similar political impasses. Further, it is clear that the development agenda is the only work these delegations are interested in at the expense of issues related to patent law that are important to Group

B and their constituents. Targeted demarches to the few countries that are blocking progress and preventing the SCP to function are being considered. In addition, Group B will increase its coordination to advance its agenda on the various issues before the SCP, such as in the areas of technology transfer, limitation and exceptions, client-attorney privilege, opposition systems, and dissemination of patent information. END COMMENT.
GRIFFITHS